SUPREME COURT, U.S.
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No. 09-1436

In The Supreme Court of the United States

JOHN LAWSON, ET UX.,

Petitioners,

v.

CITRUS COUNTY, FLORIDA,

Respondent.

On Petition For A Writ Of Certiorari To The District Court Of Appeal Of Florida, Fifth District

BRIEF IN OPPOSITION OF RESPONDENT CITRUS COUNTY

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STATEMENT OF THE CASE

The statement in the petition does not accurately reflect the sole underlying issue in this particular case: During the hearing on November 19, 2008, did the Citrus County Code Enforcement Special Master Michele Lieberman afford the Petitioners procedural due process, observe the essential requirements of the law, and establish that she had competent substantial evidence upon which to reaffirm the Petitioners' violation of Citrus County Land Development Code section 2021[1] and issue the fine pursuant to the dictates of Florida Statutes Chapter 162? The statement also fails to detail that the questions presented in the petition were never presented to the state courts as questions of Federal Constitutional law and the state courts had adequate state law grounds upon which to issue their rulings and hence this matter is not properly before this Court.

The Petitioners' claims of violations of the United States Constitution by Ms. Lieberman and the Respondent were never brought forward during the

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[1] 2021. Change of Use

> Applications for Development Orders for change of use shall be filed with the Director of the Department of Development Services or designee. Subsequent action shall be pursuant to the requirements of this LDC.

For the purpose of this LDC, a Change of Use shall be defined as: Any change of the purpose or activity for which a piece of land or its buildings is designed, arranged or intended, or for which it is occupied or maintained.

November 19, 2008 hearing. The Petitioners' claims to the contrary in their petition, they were well aware of who Ms. Lieberman was prior to the hearing on November 19. As noted by the Counsel for the Petitioners in their petition, they appeared before Ms. Lieberman on multiple occasions in 2008, prior to the November 19, 2008 hearing. *See Pet.* at 9. On October 28, 2008, Mr. Lirot and the Petitioners appeared at a public hearing, a regularly scheduled board meeting of the Citrus County Board of County Commissioners, at which time Ms. Lieberman addressed the Board for approximately 20 minutes regarding a matter she was handling on behalf of the County before the Florida Fifth District Court of Appeal. Eight minutes later, Mr. Lirot addresses the Board on behalf of the Petitioners and his co-counsel Mr. Noel Flasterstein. The Circuit Court was asked to take judicial notice of the minutes kept by the Citrus County Court Clerk and of the video of the October 28th meeting. *See Resp. App. A.*

At the November 19, 2008 hearing, Mr. Flasterstein was in attendance on behalf of the Petitioners, and did not make any sort of a motion to have Ms. Lieberman recuse herself from hearing the matter involving the Petitioners and did not address the issue at all. Mr. Flasterstein never made any argument to Ms. Lieberman alleging that sitting in her capacity as special master along with representing Citrus County in other matters before the Fifth District Court of Appeal was a violation of the United States Constitution. After the hearing,

Ms. Lieberman issued her order reaffirming the prior finding of guilt by the Code Enforcement Board and assessed a fine pursuant to Florida Statutes Chapter 162.

Mr. Flasterstein also never addressed either of the issues involved in the second and third questions that the Petitioners presented in their petition during the November 19 hearing. Mr. Flasterstein did not offer any legal argument or evidence that the Petitioners were being "convicted" of a previously uncharged violation in violation of the United States Constitution. Similarly, Mr. Flasterstein never advanced any legal argument regarding the County's Land Development Code being in violation of the United States Constitution during the hearing on November 19.

The Petitioners then took an appeal as a matter of right to the Fifth Judicial Circuit Court pursuant to Florida Statutes section 162.11. However, the Petitioners never make any sort of argument in either their initial brief or their reply brief regarding Ms. Lieberman's representation of the County before the Fifth District Court of Appeal as being a federal Constitutional due process violation.[2] Nor do they make any sort of legal argument regarding the second

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[2] The Petitioners do make mention of this issue in a pleading before the Circuit Court entitled "Motion to Abate Appeal and Remand with Instructions" but again do not argue any violation of the United States Constitution.

question that they present in their petition to this Court. Rather, the only due process argument that they put forth cites to a few intermediate level state appellate cases and a couple of cases from the Florida Supreme Court. Neither the Fifth nor Fourteenth Amendments to the United States Constitution are cited by the Petitioners in either of their Circuit Court appellate briefs. Similarly, the issue in the third question was never addressed in the Circuit Court appellate briefs filed by the Petitioners.

During oral argument before the Circuit Court on July 13, 2009, Mr. Lirot never addressed the *Caperton* decision,[3] which was issued by this Court on June 8, 2009, and never made any argument that Ms. Lieberman's actions as a special master were in violation of the United States Constitution. Also, Mr. Lirot never addressed the subjects of questions two and three in the petition during the course of the oral argument either. The Circuit Court issued its opinion on August 4, 2009, and nowhere in the opinion did the Circuit Court indicate that it was basing its opinion on federal law or the United States Constitution. Rather, the Circuit Court made it clear in its opinion that it was interpreting Florida law, particularly Florida Statutes Chapter 162 which deals with code enforcement matters, and following

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[3] *Caperton v. A.T. Massey Coal Co., Inc.*, ___ U.S. ___, 129 S. Ct. 2252, 2265-2266 (2009). And Mr. Lirot never filed a notice of supplemental authority with the Circuit Court citing *Caperton* either.

Florida law as previously interpreted by the Florida Supreme Court and the various Florida District Courts of Appeal. *See Pet. App. E* at 35a-46a.

The Petitioners subsequently petitioned the Florida Fifth District Court of Appeal for a writ of certiorari, which the court denied on January 19, 2010, as well as the Petitioners' subsequent request for a rehearing or written opinion which was denied on February 25, 2010. *See Pet. App. F*; *Pet. App. G*. As noted by the Petitioners, the decision of the Fifth District Court of Appeal to deny the petition without issuing a written opinion precluded their appeal to the Florida Supreme Court pursuant to that court's opinion in the *R.J. Reynolds*[4] case and thus their petition for writ of certiorari to this Court followed.

REASONS FOR DENYING THE WRIT

There are multiple reasons for this Court to deny the petition for writ of certiorari in the instant matter, including the fact that the Petitioners failed to preserve a federal claim on appeal, or provide proof that the District Court of Appeal did not deny their petition on state-law grounds, and therefore demonstrate that this Court has jurisdiction to review this matter. Additionally, the Petitioners' questions presented are based on misstatements of facts and

[4] *R.J. Reynolds Tobacco Co. v. Kenyon*, 882 So. 2d 986 (Fla. 2004).

the law and, even if they were not and jurisdiction was properly preserved, the Petitioners still do not present a compelling reason for the Court to grant certiorari. Therefore, the Court should deny the petition.

THE PETITIONERS FAILED TO SHOW THAT A FEDERAL CLAIM WAS ADDRESSED BY OR PROPERLY PRESENTED TO THE STATE COURTS IN ORDER TO GIVE THIS COURT JURISDICTION

None of the questions presented to this Court by the Petitioners in their petition were raised at all at the trial level before Special Master Lieberman by attorney Flasterstein, nor were they explicitly raised as Federal Constitutional law questions before the Circuit Court. Consequently, the Petitioners failed to meet their burden by showing that any federal claim was addressed by or properly presented to the state courts below. *See Adams v. Robertson*, 520 U.S. 83, 86 (1997).

Rather, the issue surrounding Ms. Lieberman acting as special master was presented by the Petitioners to the Circuit Court as a matter involving Florida law, particularly the Florida Code of Judicial Conduct. *See Resp. App. B* at 4a-7a. The Petitioners' attorney, Mr. Lirot, did not cite to the United States Constitution, any federal court decisions or any federal statute in either the Petitioners' initial or reply briefs before the Circuit Court regarding this

issue. Nowhere in the petition or the appendix attached thereto did the Petitioners demonstrate that Mr. Lirot brought forward any specific federal question before the Circuit Court at any time.

The Petitioners did take pains to provide the Circuit Court with supplemental authority, on an issue not presently before this Court, approximately one week after the oral argument before the Circuit Court on July 13, 2009. *See Resp. App. C.* What the Petitioners failed to do is provide the Circuit Court with the *Caperton* decision for that court to consider, despite the fact this Court had released the decision in *Caperton* a month prior to the oral argument before the Circuit Court, or any other federal authority. The Petitioners also failed to provide in their petition any specific proof that the Petitioners raised either of the issues raised in the second and third questions presented in their petition before either Ms. Lieberman or before the Circuit Court on appeal.

The only time the Petitioners arguably raised these issues in a federal constitutional context was in their petition for writ of certiorari to the Fifth District Court of Appeal. It was at this stage where they first cited *Caperton*, where they first made the argument that the Citrus County Comprehensive Plan was unconstitutional, and where they make the argument as to the Petitioners being "convicted" of a charge not listed in a charging document. However, other than

Caperton, the Petitioners only cited to one other decision by this Court.[5] Nowhere in the petition did they specifically cite to the Fifth and Fourteenth Amendments of the United States Constitution, and the Due Process Clause is mentioned only once in passing, in a quotation of a holding of this Court within a quotation from a Florida District Court of Appeal case. Instead the Petitioners relied on the greatest extent to Florida state law, and to a lesser extent law from other states in support of their petition.

As this Court has previously held, an issue that was not presented to state courts in such a manner that it was necessarily decided by the highest state court would relieve this Court of the opportunity to take jurisdiction over the matter. *See Street v. New York*, 394 U.S. 576, 581-582 (1969). Here, unlike the Plaintiffs in *Street* and *Gorieb*, the Petitioners failed to properly raise these constitutional issues in the state trial[6] or first tier appellate level courts and

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[5] *Gorieb v. Fox*, 274 U.S. 603 (1927), in which this Court held that an ordinance imposing a set-back requirement was constitutional. The Plaintiff in *Gorieb* presented his arguments that the ordinance was unconstitutional starting in the state trial court, as opposed to the Petitioners in this case. *See id.* at 605.

[6] The Citrus County code enforcement special master is not a judicial officer under Florida law, but rather an administrative hearing officer. *See Fla. Stat. s.* 162.03(2) (2008). The Respondent uses the term "trial court" when referring to the special master in this brief for ease of reference.

instead waited to raise them before the state district court of appeal, one level below the Florida Supreme Court. This is insufficient to properly raise a federal question and therefore this Court is without jurisdiction to hear this matter. *See Street*, 394 U.S. at 582-583; *Raley v. Ohio*, 360 U.S. 423, 434-435 (1959).

THE STATE COURTS HAD ADEQUATE AND INDEPENDENT STATE LAW GROUNDS UPON WHICH TO BASE THEIR DECISIONS

Not only did the Petitioners fail to meet their burden in proving that they had sufficiently raised any federal claim before the state courts or that the state courts had addressed those claims, but at each level the state courts had adequate state law grounds upon which to base their decision. As noted above, the Circuit Court in its order, listed what its responsibilities were in reviewing the actions of Ms. Lieberman: determining whether or not procedural due process was accorded, whether the essential requirements of the law have been observed, and whether the administrative findings and judgment were supported by competent substantial evidence.[7] *See Pet. App. E* at 36a.

The Circuit Court then went through each requirement individually in its opinion, noting that

[7] Citing the Florida Supreme Court case of *City of Deerfield Beach v. Vaillant*, 419 So. 2d 624, 626 (Fla. 1982).

due process was accorded to the Petitioners in that they admitted they had received notice of the November 19, 2008 hearing and had had the opportunity to be heard before Ms. Lieberman. The Circuit Court went so far as to address the Petitioners' claims against Ms. Lieberman sitting as the special master, noting that Ms. Lieberman was not in violation of Florida Statutes section 162.05(5)[8] due to the fact she was not sitting as the local governing body attorney during the code enforcement matters. The Circuit Court clearly based its analysis on state law, although it did mention this Court's decision in *Tumey v. Ohio*, 253 U.S. 510 (1927) as an aside.[9] *See Pet. App. E* at 37a-39a.

The Circuit Court then discussed whether or not the essential elements of the law were observed by

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[8] *Fla. Stat. s.* 162.05(5) (2008) states: "The local governing body attorney shall either be counsel to an enforcement board or shall represent the municipality or county by presenting cases before the enforcement board, but in no case shall the local governing body attorney serve in both capacities.

Fla. Stat. s. 162.04 (2008) states in pertinent part: "Definitions. – As used in ss. 162.01-162.13, the term: (3) "Local governing body attorney" means the legal counselor for the county or municipality."

Additionally, Florida Statute section 162.03(2) explicitly states that Florida Statute section 162.05 does not apply to special magistrates: "References in this chapter to an enforcement board, except in s. *162.05*, shall include a special magistrate if the context permits." § 162.03(2) *Fla. Stat.* (2008).

[9] However, *Tumey* was never cited by the Petitioners in either of their briefs before the Circuit Court.

Ms. Lieberman and correctly noted that Florida Statutes section 163.3194(1)(a)[10] provides that the County cannot issue a development order (permit) in violation of their adopted comprehensive land use plan and therefore Ms. Lieberman followed the essential elements of the law in finding the Petitioners in violation of the County's Land Development Code regarding changing the use of their property without receiving a development order, an order the County could not issue to the Petitioners (so they could abate the code case) without violating the comprehensive plan. *See Pet. App. E* at 39a-44a. Therefore it is clear the Circuit Court based its analysis of this point on state law.

Finally, the Circuit Court discussed whether or not Ms. Lieberman had competent substantial evidence to issue a fine pursuant to Florida Statutes section 162.09[11] and found that based upon the

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[10] *Fla. Stat. s.* 163.3194 Legal status of comprehensive plan. –

(1)(a) After a comprehensive plan, or element or portion thereof, has been adopted in conformity with this act, all development undertaken by, and all actions taken in regard to development orders by, governmental agencies in regard to land covered by such plan or element shall be consistent with such plan or element as adopted.

[11] *Fla. Stat. s.* 162.09(1) provides: "An enforcement board, upon notification by the code inspector that an order of the enforcement board has not been complied with by the set time or upon finding that a repeat violation has been committed, may order the violator to pay a fine in an amount specified in this section for each day the violation continues past the date set by

(Continued on following page)

testimony of County witnesses, including the code officer that the Petitioners were not in compliance with the previous order, and the prior finding of guilt by the previously constituted Code Enforcement Board that Ms. Lieberman had competent substantial evidence to issue the fine in this case. *See Pet. App. E* at 44a-46a. Undoubtedly, the Circuit Court had to rely upon state law in its analysis of this point.

When the Fifth District Court of Appeal reviewed the Petitioners' petition for writ of certiorari, their scope of review under Florida law was even narrower. As the Florida Supreme Court held in *Haines City Community Development v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995), a district court of appeal in reviewing the order of a circuit court acting in its appellate capacity is limited to whether: (1) the circuit court afforded procedural due process and (2) whether the circuit court observed the essential requirements of the law. Clearly, the Fifth District Court of Appeal had independent and adequate state grounds upon which to deny the Petitioners' petition for writ of certiorari and motion for rehearing without issuing a written opinion.[12]

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the enforcement board for compliance or, in the case of a repeat violation, for each day the repeat violation continues, beginning with the date the repeat violation is found to have occurred by the code inspector."

[12] Florida appellate courts have the discretion whether or not to issue written opinions when disposing of cases. *See R.J. Reynolds Tobacco Co.*, 882 So. 2d at 989.

As this Court has previously held, this Court will not accept jurisdiction of a case where the decision below rests on an adequate and independent state ground. *See Michigan v. Long*, 463 U.S. 1032, 1037 (1983). Even if a federal question is decided by the state court, this Court has held that it has no power to review a state law determination, and that even if the Court were to accept jurisdiction as to the federal question, such an opinion would merely be advisory. *See Coleman v. Thompson*, 501 U.S. 722, 729 (1991). This rule applies whether the state law ground is substantive or procedural. *See id.* Here, the various state courts had adequate and independent state laws to base their decisions on, whether they were following Florida Statutes Chapter 162, or case law of the Florida Supreme Court.

Therefore, as the Petitioners have not met their burden of showing that any of the federal due process issues were properly presented to the state courts, and as the state courts demonstrably had adequate and independent state law grounds upon which to address those issues even if the Petitioners had met such burden, the Respondent would submit that the Court is without jurisdiction to hear these matters and should deny the petition for writ of certiorari.

THE MERITS QUESTIONS PRESENTED BY THE PETITIONERS DO NOT WARRANT REVIEW BY THE COURT

The merits questions presented by the Petitioners to the Court do not warrant review by the

Court because they are based on either misstatements of the facts or the law.

Ms. Lieberman was not the Attorney Representing Citrus County in the Code Enforcement Case Against the Petitioners and *Caperton* is Inapplicable as Precedent

The Petitioners' first merits question involves both misstatements of law and the facts. The Petitioners have continually argued that Ms. Lieberman, while representing Citrus County on totally separate and distinct cases before the Florida Fifth District Court of Appeal, was not legally able to serve as the code enforcement special master under Florida law. The facts are, however, that Ms. Lieberman was not serving as the local governing body attorney during the code enforcement case against the Petitioners. Rather it was the undersigned counsel of record who has been representing Citrus County at every step of this matter since February 2008, which the Petitioners' attorney, Mr. Lirot, actually acknowledged during the oral argument before the Circuit Court.

Florida Statutes section 162.04 (2008) reads:

> Definitions.—As used in ss. 162.01-162.13, the term:
>
> (1) "Local governing body" means the governing body of the county or municipality, however designated.

> (2) "Code inspector" means any authorized agent or employee of the county or municipality whose duty it is to assure code compliance.
>
> (3) "Local governing body attorney" means the legal counselor for the county or municipality.
>
> (4) "Enforcement board" means a local government code enforcement board.
>
> (5) "Repeat violation" means a violation of a provision of a code or ordinance by a person who has been previously found through a code enforcement board or any other quasi-judicial or judicial process, to have violated or who has admitted violating the same provision within 5 years prior to the violation, notwithstanding the violations occur at different locations.

The Petitioners consistently fail to address the part of the statute that reads "as used in ss. 162.01-162.13" in their argument that the statute applies to Ms. Lieberman based upon her representation of Citrus County in non-code enforcement appellate level cases. A plain reading of the statute makes it clear that the term "local governing body attorney" only applies to attorneys representing the local governing body in code enforcement proceedings, as those are the proceedings addressed in the above noted statutory sections. None of the bills submitted in the appendix by the Petitioners can demonstrate that Ms. Lieberman ever represented Citrus County

in any code enforcement proceeding at the same time as she was serving as Citrus County's code enforcement special master. Further, it has always been the position of the Respondent that the Petitioners waived this issue under state law due to the fact that they were aware of Ms. Lieberman's representation of the County before the Fifth District Court of Appeal prior to the hearing on November 19, 2008 and failed to make a motion to have her recuse herself.[13]

Additionally, the holding in *Caperton* is inapplicable to the situation in this matter. As noted by the Petitioners, this Court recognized that the circumstances in *Caperton* were extreme and that the holding in that case (and all other judicial recusal cases) was limited to those specific circumstances.[14] *See Caperton*, 129 S. Ct. at 2265-2266. In reaching the holding in *Caperton*, this Court addressed two instances where the Court has previously held judicial recusal was constitutionally required: (1)

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[13] *See In Re: Estate of Carlton v. Rogers*, 378 So. 2d 1212 (Fla. 1980) in which the Florida Supreme Court held that it is a "general rule of law that a party waives any grounds for disqualification of a judge or justice when the suggestion is not filed within a reasonable period of time after having knowledge of such grounds." *Id.* at 1218. The Court went on to hold that "[a]llowing a party to request disqualification after a decision has been rendered by the Court provides a second opportunity to achieve a favorable result when the first decision is adverse, an opportunity not available to the opposing party." *Id.*

[14] The holding of which was addressed and restated again by the Court a few months ago in *Citizens United v. Federal Election Commission*, ___ U.S. ___, 130 S. Ct. 876, 910 (2010).

where a judge in a local tribunal has a direct financial interest in the outcome of a case, and (2) where a judge has no pecuniary interest in a case, but was challenged due to a conflict arising from the judge's participation in an earlier proceeding. *See id.* at 2259-2261.

In this particular case, the factual circumstances do not approach anything remotely described in *Caperton*, *Tumey* or *Murchison*.[15] The Petitioners cannot demonstrate that Ms. Lieberman has a direct financial interest in the outcome of the case against them, such as the issuance of the fines by the mayor in *Tumey* which went to directly supplement his salary. One would think if this was truly the case, then Ms. Lieberman would have imposed the full fine amount of $70,250 as accrued at the time against the Petitioners rather than the reduced amount of $25,000 that she did impose. *See Pet. App. C* at 14a-15a. In addition, it was not Ms. Lieberman who decided to issue a notice of violation against the Petitioners and then sit as the hearing officer to decide the matter similar to *Murchison*.

Therefore, this question does not fit the criteria for review by the Court due to the failure of the Petitioners to demonstrate that there is even a rational basis to find an appearance of bias on the part of Ms. Lieberman and the Court should deny the petition for writ of certiorari on this point.

[15] *In Re: Murchison*, 349 U.S. 133 (1955).

The Petitioners Were Not "Convicted" for an Alleged Violation Not Included in the "Charging Instrument"

The documentation provided by the Petitioners in the appendix to their petition is sufficient to show that the Petitioners have misstated the facts on this particular merits question as well as the law. The administrative complaint filed by Code Inspector William Harms on September 28, 2007 informs the Petitioners that (among other things) the Petitioners are being cited for a violation of Section 2021 of the Citrus County land development regulations for changing the use of their property without permits. *See Pet. App. A-1* at 1a-2a. The order entered by the Citrus County Code Enforcement Board shows that the Petitioners were found in violation of the Citrus County Land Development Code for engaging in a change of use of their property without obtaining permits. *See Pet. App. B* at 7a-9a.

The order entered by Ms. Lieberman clearly notes that the Petitioners were previously found guilty of violating Section 2021 by the Code Enforcement Board and remained in violation at the time of the order. *See Pet. App. C* at 10a-16a. Therefore, it is beyond dispute that the Petitioners were "convicted" of violating Section 2021 by the Code Enforcement Board and that Ms. Lieberman, following the law of the State of Florida, used her discretion at that time based upon the evidence provided at the hearing to issue a fine for the days that the Petitioners' property had been in violation of

the requirements of the Citrus County Land Development Code. *See Fla. Stat. s.* 162.09(1); *Pet. App. C* at 10a-16a.

The Petitioners were never "convicted" of violating the Citrus County Comprehensive Plan contrary to the argument put forth in their petition. The issue surrounding the testimony regarding the setback requirement in the comp plan actually came up regarding the Petitioners' efforts to abate the land development code violation and whether or not Citrus County would be able to issue a change of use permit to the Petitioners. As noted by Ms. Lieberman in her order, due to the fact the Petitioners' structure sits within the 15 foot setback area required under the comp plan, the County cannot legally issue a permit for the structure and thus the Petitioners cannot abate the code violation by receiving their change of use permit.[16] *See Pet. App. C* at 12a.

Therefore, it is the position of the Respondent that the Court should not entertain the question as

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[16] The Petitioners included an affidavit prepared by their retained architect Thomas Williford in the appendix to their petition where Mr. Williford gives testimony as to his measurements of the setback area. As the Court will note, the date on the affidavit is September 14, 2009, well after the hearings that took place in this matter and the affidavit was therefore never introduced into evidence before Ms. Lieberman at the underlying hearing on this matter. It is not a part of the record of the proceedings of this case and the Respondent would request that the Court not give it any weight in its consideration of the petition.

presented by the Petitioners due to the fact that the Petitioners were found in violation of a provision of the Citrus County Land Development that they were duly notified of. The Petitioners received all of the substantive and procedural due process rights they were entitled to under the Constitution and the Court should deny the petition for writ of certiorari on this point.

The Citrus County Comprehensive Plan can be Amended and is Therefore Constitutional

As noted above in this brief, the Petitioners failed to properly preserve this issue for review by the Court. However, should the Court decide that is has jurisdiction to review this issue, the Court will find that the Petitioners have misstated the law and facts on this matter in regards to their ability to seek an amendment to the Citrus County Comprehensive Plan.

Florida Statutes Chapter 163, Part II lists the laws enacted by the Florida Legislature regarding growth management and land use planning in the State of Florida. Included in Chapter 163, Part II is statute section 163.3161, which lists the legislature's policy reasons for adopting the "Local Government Comprehensive Planning and Land Development Regulation Act". Chief among the policy reasons listed is the legislature's recognition that local governments need to have the ability to control growth and the uses of land within their jurisdictions

in order to provide for the protection of the public health, safety, comfort, and good order and to make sure that services can be provided in an efficient manner to the citizens within the jurisdiction. *See Fla. Stat. s.* 163.3161(3) (2008).

Florida Statue section 163.3161(5) (2008) specifically provides that "no public or private development shall be permitted except in conformity with comprehensive plans, or elements or portions thereof, prepared and adopted in conformity with this act." *See also Fla. Stat. s.* 163.3194(1)(a) (2008). The law also requires that each local government establishes and enacts a local comprehensive plan in accordance with Chapter 163, Part II. *See Fla. Stat. s.* 163.3167(2) (2008). However, this does not mean that the elements of a previously adopted comprehensive plan cannot be amended, and in fact the legislature set out a process to allow anyone to seek to have a local comprehensive plan amended. *See Fla. Stat. s.* 163.3181 (2008). So while the Petitioners could not seek a variance issued by County staff as such a variance would be in violation of the comprehensive plan, a county ordinance, they could seek to have the comprehensive plan amended.

In fact, the Petitioners did attempt to have the comprehensive plan amended and have their property rezoned to a commercial land designation and were denied. *See Resp. App. D.* Additionally, the Petitioners had the opportunity to challenge the denial of their proposed comprehensive plan amendment, but failed to do so. *See Fla. Stat. s.* 163.3187(3)(a) (2008). Thus,

the Petitioners had multiple opportunities to obtain relief and were denied in one instance and failed to take the opportunity in another, and therefore their claims of due process violations ring very hollow.

The Petitioners' reliance on *Gorieb* and *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) is misplaced. In *Gorieb*, this Court reaffirmed its' holding in *Euclid* and stated that:

> Comprehensive zoning laws and ordinances, prescribing, among other things, the height of buildings to be erected and the extent of the area to be left open for light and air, and in aid of fire protection, etc., are, in their general scope, valid under the federal Constitution. It is hard to see any controlling difference between regulations which require the lot owner to leave open areas at the sides and rear of his house and limit the extent of his use of the space above his lot and a regulation which requires him to set his building a reasonable distance back from the street.

Gorieb, 274 U.S. at 608.

The Petitioners claim that the holding in *Gorieb* is that variances from zoning ordinances are constitutionally required. However, a more accurate reading of *Gorieb* is that the holding is not that variances are required under the Constitution, but rather that local governments have the discretion to reserve authority to provide variances in "exceptional cases" when enacting their ordinances and that

ordinances that allow such variances are constitutional until they are challenged and determined to be otherwise. *Id.* at 607-610.

Accordingly, it is the position of the Respondent that the Court should not entertain the question as presented by the Petitioners due to the fact that the Citrus County Comprehensive Plan is not in violation of the Constitution and the Court should deny the petition for writ of certiorari on this point.

The Petitioners Failed to Demonstrate a Compelling Reason for the Court to Grant Certiorari

The granting of petition for a writ of certiorari is one of complete judicial discretion on the part of the Court. As the Court has previously held, "special and important" reasons for the Court to grant certiorari must be presented by the petitioner before the Court will grant such a writ. *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 74 (1955). Currently, Rule 10 of the Court's Rules states that "[a] petition for a writ of certiorari will be granted only for compelling reasons" and then goes on to list the character of the reasons the Court considers. *Sup. Ct. R.* 10. While the reasons noted do not control the Court's discretion, they certainly provide guidance to parties seeking the Court's review as to the reasons the Court would grant certiorari and therefore one would assume that a party would address those concerns in their petition.

The Petitioners in this matter have utterly failed to demonstrate that the Florida Fifth District Court of Appeal decided an important federal question in a way that conflicts with another state court of last resort or a United States court of appeals. *See Sup. Ct. R.* 10(b). Moreover, the Petitioners have failed to demonstrate that any state court in this matter decided an important question of federal law that has not been settled by this Court or in a way that conflicts with relevant decisions of this Court. *See Sup. Ct. R.* 10(c); *Rice*, 349 U.S. at 74.

Rather, the Petitioners have urged the Court to grant certiorari review of this matter in order to provide "much needed guidance" to land owners, the general public and local governments regarding proper code enforcement procedures. *Pet.* at 40-42. However, this Court has previously held that it does not sit for the purpose of considering such abstract issues absent a substantive federal question. *See Rice*, 349 U.S. at 74. Therefore, as the Petitioners have failed to demonstrate that there is a compelling reason for this Court to grant certiorari pursuant to Rule 10, the Court should deny the petition for writ of certiorari.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

GREGG R. BRENNAN
Assistant County Attorney
Counsel of Record

RICHARD WM. WESCH
County Attorney

Office of the County Attorney
Citrus County, Florida
110 N. Apopka Ave.
Inverness, Florida 34450
(352) 341-6560

APPENDIX A

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR CITRUS COUNTY, FLORIDA

JOHN LAWSON and JO ANNE LAWSON,

Appellants,

v.

CITRUS COUNTY, a political Subdivision of the State of Florida,

Appellee,

_____/

Case Number: 2008-CA-007192
CE Case Number: 0707-007

REQUEST FOR THE COURT TO TAKE JUDICIAL NOTICE

COMES NOW the Appellee, CITRUS COUNTY, a political subdivision of the State of Florida, by and through their undersigned counsel, pursuant to Florida Statutes sections 90.202 and 90.203 to request that the Court take judicial notice of the following materials in the Court's consideration of this matter:

1. The minutes of the Regular Meeting of the Citrus County Board of County Commissioners for October 28, 2008. *See* Exhibit "A". Said minutes were officially approved by the Citrus County Board of County Commissioners during the Regular Meeting on December 16, 2008 and said minutes are kept

by the Citrus County Clerk of Court. *See* Exhibit "B".

2. The video recording of the Regular Meeting of the Citrus County Board of County Commissioners for October 28, 2008, which is kept and maintained by the Citrus County Clerk of Court and available to the public through that office's website at: http://citrus.granicus.com/ViewPublisher.php?view_id=2.

Respectfully submitted,

/s/ Gregg R. Brennan
Gregg R. Brennan
Assistant County Attorney
Attorney for the Appellee,
Citrus County
FBN: 296340
110 N. Apopka Ave.
Inverness, Florida 34450
(352) 341-6560 (phone)
(352) 341-6585 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and all attachments have been furnished via U.S. Mail to Luke C. Lirot, Esq., attorney for the Appellants, 2240 Belleair Rd., Ste. 190, Clearwater, FL 33764 this 7th day of July, 2009.

/s/ Gregg R. Brennan
Gregg R. Brennan
Assistant County Attorney
FBN: 296340

APPENDIX B

IN THE CIRCUIT COURT OF THE FIFTH JUDICIAL CIRCUIT IN AND FOR CITRUS COUNTY, STATE OF FLORIDA CIRCUIT CIVIL DIVISION

JOHN LAWSON and JO ANNE LAWSON,

Appellants,

v.

CITRUS COUNTY, a political Subdivision of the State of Florida,

Appellee,

/

Appeal Case Number: 2008-CA-007192 CE
Case Number: 0707-007

(Filed Jul. 10, 2009)

APPELLANTS' REQUEST FOR JUDICIAL NOTICE AND NOTICE OF FILING SUPPLEMENTAL AUTHORITY

The Appellants, JOHN LAWSON and JO ANNE LAWSON, by and through their undersigned counsel, hereby file with the Court this Request for Judicial Notice and Notice of Filing Supplemental Authority, and state as follows:

Request for Judicial Notice

Pursuant to Florida Statutes § 90,202, Appellants respectfully request this Court to take judicial

notice of the following records of the Citrus County Attorney's Office:

1. Invoices from Michele Lieberman, Esq., from October 31, 2007 through May 5, 2009 showing her employment by the County Attorney's office at the same time she was sitting as a Code Enforcement Special Master in the subject matter. (Exhibit A) These invoices total over $25,000 in the period October 31, 2007 through May 5, 2009 and do not include invoices submitted to Citrus County by Ms. Lieberman for her services as a Code Enforcement Special Master.

2. An invoice from Michele Lieberman to Citrus County dated June 30, 2008, which details an *ex parte* meeting with the County staff less than three weeks before she first presided as the Code Enforcement Special Master hearing the subject case. (Exhibit B) Exhibit B also describes a "discussion with client: PA [presumably Senior Assistant County Attorney Peter Aare] re. conflicts," one week before the day she first presided over the subject matter.

Notice of Supplemental Authority

In its Answer Brief, Citrus County asks this Court to accord a "presumption of correctness" to the Code Enforcement Special Master using the analogy of a trial court (Answer Brief at page 6). Appellants thus submit as supplemental authority The *Florida Code of Judicial Conduct* which applies:

Anyone, whether or not a lawyer, who performs judicial functions, including **but not limited to** a civil traffic infraction hearing officer, court commissioner, general or special magistrate, domestic relations commissioner, child support hearing officer, or judge of compensation claims, shall, while performing judicial functions, conform with Canons 1, 2A, and 3, and such other provisions of this Code that might reasonably be applicable depending on the nature of the judicial function performed. [Emphasis Added]

In turn, Canons 2 and 3 provide:

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all of the Judge's Activities

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

. . .

(a) Where circumstances require, ex parte communications for scheduling, administrative purposes, or emergencies that do not deal with substantive matters or issues on the merits are authorized, provided:

. . .

(ii) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.

Canon 5, also applicable to someone holding a position such as a Code Enforcement Special Master, provides:

> Canon 5. A Judge Shall Regulate Extrajudicial Activities to Minimize the Risk of Conflict with Judicial Duties
>
> A. Extrajudicial Activities in General. A judge shall conduct all of the judge's extra judicial activities so that they do not:
>
> (1) cast reasonable doubt on the judge's capacity to act impartially as a judge;
>
> (2) undermine the judge's independence, integrity, or impartiality;

Respectfully submitted,

/s/ Luke Lirot

Luke Lirot, Esquire
Florida Bar Number 714836
Bryan R. Snyder, Esquire
Florida Bar Number 042340
Luke Charles Lirot, P.A.
2240 Belleair Road,
Suite 190
Clearwater, Florida 33764
Telephone: (727) 536-2100
Facsimile: (727) 536-2110
Email: luke2@lirotlaw.com/
bryan@lirotlaw.com
Counsel for the Appellants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via [✓] ~~U.S. mail~~, [✓] facsimile ~~FEDEX OVERNIGHT DELIVERY~~ Hand Delivery, and/or [✓] ~~hand delivery~~ to Citrus County Attorney's Office, 110 N. Apopka Avenue, Inverness, Florida 34450, on this 10th day of July, 2009.

/s/ Luke Lirot
Luke Lirot, Esquire
Florida Bar Number 714836

APPENDIX C

[LOGO] **LUKE CHARLES LIROT, P.A.** [LOGO]
ATTORNEYS AND COUNSELORS AT LAW
2240 BELLEAIR ROAD, SUITE 190
CLEARWATER, FLORIDA 33764
(727) 536-2100 TEL (727) 536-2110 FAX

July 20, 2009

Via U.S. Mail
The Honorable Patricia V. Thomas
Citrus County Courthouse
110 North Apopka Avenue
Inverness, Florida 34450-4299

Re: *Lawson v. Citrus County, Appeal Number 2008 CA 007192*

Dear Judge Thomas:

Following up on the oral argument held on July 13, 2009, in the above-referenced matter, enclosed please find copies of *ABC Liquors, Inc. v. City of Ocala*, 366 So.2d 146 (Fla. 1st DCA 1979) and *Effie, Inc. v. City of Ocala*, 438 So.2d 506 (Fla. 5th DCA 1983), for your consideration. As your Honor may recall, I indicated that I would provide copies of these cases as supplemental authority with respect to the issue of, even as "highly regulated businesses," alcoholic beverage facilities are still entitled to the requirements of due process, and even though communities have significant powers over businesses that enjoy the privilege of serving alcohol, such governmental powers

do not cover any relaxation of basic due process rights.

Additionally, in light of the voluminous record in this matter, and the fact that many of my arguments were predicated on the specific contents of the cavalcade of orders related to the code enforcement issue, to save the Court the necessity of digging through the record to find same, I have taken the liberty of summarizing the parts of the record regarding the dates of the many public hearings held in the code enforcement matter, the dates of any applicable orders, and the appropriate citations to the record:

Date of Public Hearing	**Date of Order**	**Record Citation**
December 19, 2007	December 26, 2007	Vol. I, Doc. 34
March 19, 2008	March 27, 2008	Vol. I, Doc. 35
June 18, 2008	June 27, 2008	Vol. I, Doc. 36
August 20, 2008	September 18, 2008	Vol. I, Doc. 37
November 19, 2008	December 9, 2008	Vol. I., Doc. 7

For the sake of ease and efficiency, I have also enclosed copies of the aforementioned orders, which are already contained in the record as indicated

above. If you have any questions or concerns, please feel free to contact my office. Thank you for your consideration.

Very truly yours,

/s/ Luke Lirot
Luke Lirot, Esquire

Enclosures

Cc: Gregg Brennan, Esq.

APPENDIX D

ORDINANCE NO. 2009-A12

AN ORDINANCE OF CITRUS COUNTY, FLORIDA, AMENDING THE CITRUS COUNTY COMPREHENSIVE PLAN, ORDINANCE NO. 89.04 AS AMENDED, BY REVISION TO THE GENERALIZED FUTURE LAND USE MAP AS PRESENTED HEREIN BELOW; PROVIDING FOR SEVERABILITY; PROVIDING FOR INCLUSION AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Citrus County Board of County Commissioners recognize the need to plan for orderly growth and development while protecting Citrus County's abundant natural resources, and

WHEREAS, the Board of County Commissioners adopted the Citrus County Comprehensive Plan, Ordinance No. 89-04 on April 18, 1989, and subsequent amendments, and

WHEREAS, Chapter 163, Florida Statutes and Chapter 9J-5, Florida Administrative Code provide for the amendment of the Comprehensive Plan,

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF CITRUS COUNTY, FLORIDA AS FOLLOWS:

SECTION 1. SHORT TITLE

THIS ORDINANCE shall be known as, cited as, and referred to as the "Citrus County Comprehensive Plan 2009 Small Scale Review Third Small Scale Cycle Amendment", and shall be effective within the unincorporated areas of Citrus County, Florida.

SECTION 2. AUTHORITY

This "Citrus County Comprehensive Plan 2009 Third Small Scale Cycle Amendment" is adopted pursuant to Chapter 163, Florida Statutes.

SECTION 3. REVISIONS AND ADDITIONS TO THE GENERALIZED FUTURE LAND USE MAP (GFLUM)

CPA-09-12 R. Bruce McLaughlin for John and JoAnne Lawson (Cedar Key Fish House, a.k.a. The Freezer)

Re-designation from CLC, Coastal and Lakes Commercial District, to CL, Low Intensity Coastal and Lakes District for Lot 7 and portions of Lots 2, 3, 5, and 6 of Block 6, Lot 1 of Block 7, and Lot 2 of Block 15, together with vacated roads and alleys of Town Plat of Homosassa recorded in Plat Book 1, Page 6 located in Section 31, Township 19 South, Range 17 East, as presented in Application CPA-09-12 and as further fully described in Exhibit "A" attached hereto and incorporated herein by reference.

SECTION 4. SEVERABILITY

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The Board of County Commissioners hereby declares that it would have passed this ordinance and each section, subsection, sentence, clause or phrase hereof, irrespective of the fact that any one or more section, subsections, sentences, causes, or phrases be declared illegal, invalid or unconstitutional and all ordinances and parts of ordinances in conflict with the provisions of the ordinance are hereby repealed.

SECTION 5. INCLUSION IN THE COMPREHENSIVE PLAN

It is the intention of the Board of County Commissioners of Citrus County, Florida, and it is hereby provided that the provisions of this Ordinance shall become and be made a part of the Citrus County Comprehensive Plan (Citrus County. Ordinance No. 89-04). To this end, the sections of this Ordinance may be renumbered or relettered to accomplish such intention, and that the word "ordinance" may be changed to "section", "article", "policy" or other appropriate designation.

SECTION 6. EFFECTIVE DATE

This ordinance shall not become effective until 31 days after adoption. However, if challenged within 30 days after adoption, this ordinance shall not become effective until the state land planning agency or the Administration Commission issues a final order determining that the adopted small scale development amendment is in compliance with the Local Government Comprehensive Planning and Land Development Regulation Act, Chapter 163, Part II, Florida Statutes.

DONE AND ADOPTED In regular meeting of the Board of County Commissioners of Citrus County, Florida, this 21st day of July 2009.

BOARD OF COUNTY COMMISSIONERS OF CITRUS COUNTY, FLORIDA

BY: /s/ John Thrumston
JOHN THRUMSTON, CHAIRMAN

ATTEST:

/s/ Theresa Steelfox, DC
for **BETTY STRIFLER, CLERK**

**APPROVED AS TO FORM
FOR THE RELIANCE OF
CITRUS COUNTY ONLY.**

/s/ Robert Battista [SEAL]
COUNTY ATTORNEY

APPENDIX D

EXHIBIT A

CPA-09-12 R. Bruce McLaughlin for John and JoAnne Lawson (Cedar Key Fish House, a.k.a. The Freezer)

Re-designation from CLC, Coastal and Lakes Commercial District, to CL, Low Intensity Coastal and Lakes District for Lot 7 and portions of Lots 2, 3, 6, and 8 of Block 6, Lot 1 of Block 7, and Lot 2 of Block 15, together with vacated roads and alleys of Town Plat of Homosassa recorded in Plat Book 1, Page 6 located in Section 31, Township 19 South, Range 17 East, as presented in Application CPA-09-12 and as further fully described as follows:

A PORTION OF LOTS 2, 3, 5, AND 6, AND A PORTION OF THE ALLEY AS DESCRIBED IN OFFICIAL RECORD BOOK 431, PAGE 813, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, ADJACENT THERETO, AND A PORTION OF BAY STREET, OF TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGIN AT THE SOUTHWEST CORNER OF LOT 6, BLOCK 6, OF TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS OF

CITRUS COUNTY, FLORIDA, THENCE S. 82 DEGREES 05' W. ALONG THE SOUTH LINE OF SAID LOT 6 AND A SOUTHWESTERLY PROJECTION THEREOF A DISTANCE OF 140 FEET, THENCE S. 7 DEGREES 55' E. 232 FEET, MORE OR LESS, TO THE WATERS OF OTTER CREEK, THENCE ALONG SAID WATERS THE FOLLOWING COURSES AND DISTANCES: S. 85 DEGREES W. 72 FEET, THENCE N. 47 DEGREES 05' 44" W. 36.55 FEET, THENCE N. 3 DEGREES 56' 09" E. 119.18 FEET TO A POINT ON THE SOUTHERLY WATERS EDGE OF AN EXISTING CANAL, THENCE N. 87 DEGREES E. ALONG SAID WATERS A DISTANCE OF 220 FEET, MORE OR LESS, TO A POINT ON THE EAST LINE OF SAID BLOCK 6, THENCE S. 2 DEGREES 51' E. ALONG SAID EAST LINE A DISTANCE OF 98.12 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

AND

LOT 7, BLOCK 6, OF TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, AND A PORTION OF VACATED BAY STREET ADJACENT THERETO.

AND

LOT 1, BLOCK 7, OF TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1,

PAGE 6, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, COMMONLY KNOWN AS THE "OLD MAP," AND A PORTION OF THE ALLEY AS DESCRIBE DIN OFFICIAL RECORD BOOK 679, PAGE 1748, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA.

AND

THE NORTHERLY 1/2 OF THAT PORTION OF VACATED CREEK AVENUE, ALSO KNOWN AS LANE, LYING SOUTHWESTERLY OF BOULEVARD AND NORTHEASTERLY OF A SOUTHEASTERLY PROJECTION OF THE MOST WESTERLY LINE OF LOT 1, BLOCK 7, OF TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA.

AND

COMMENCE AT THE SOUTHWEST CORNER OF LOT 1, BLOCK 7, OF TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, THENCE SOUTH ON A PROJECTION OF THE WEST LINE OF LOT 1 TO THE CENTER OF CREEK AVENUE FOR THE POINT OF BEGINNING, THENCE CONTINUE ON A PROJECTION OF THE WEST LINE OF LOT 1 TO THE NORTH LINE OF LOT 13, BLOCK 7, THENCE NORTHEAST ALONG

THE NORTH LINE OF LOT 13 TO THE NORTHEAST CORNER OF SAID LOT, THENCE NORTH ALONG A PROJECTION OF THE EAST LINE OF LOT 13 TO THE CENTER OF CREEK AVENUE, THENCE SOUTHWEST TO THE POINT OF BEGINNING.

AND

BEGIN AT THE NORTHEAST CORNER OF LOT 13, BLOCK 7, OF TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS OF CITRUS COUNTY FLORIDA, THENCE SOUTHWEST ALONG THE NORTH LINE OF SAID LOT 13, 50 FEET TO A POINT, THENCE SOUTHEAST TO THE SOUTHEAST CORNER OF LOT 13, THENCE NORTH ALONG THE EAST LINE OF SAID LOT TO THE POINT OF BEGINNING.

AND

LOT 2, BLOCK 15, OF TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA.

AND

A PORTION OF BOULEVARD AS SHOWN ON TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS

OF CITRUS COUNTY, FLORIDA, AND ALSO SHOWN ON CITRUS COUNTY PRESCRIPTIVE ROAD PLAT BOOK 1, PAGES 23 THROUGH 31, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, DESCRIBED AS FOLLOWS: COMMENCE AT THE MOST NORTHERLY CORNER OF LOT 13, BLOCK 7, TOWN PLAT OF HOMOSASSA, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT BOOK 1, PAGE 6, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, AND ALSO SHOWN ON CITRUS COUNTY PRESCRIPTIVE ROAD PLAT BOOK 1, PAGES 23 THROUGH 31, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, SAID POINT BEING ON A CURVE CONCAVED NORTHEASTERLY HAVING A CENTRAL ANGLE OF 21 DEGREES 17' 56" AND A RADIUS OF 1374.32 FEET, SAID POINT ALSO BEING ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF BOULEVARD AS SHOWN ON SAID TOWN PLAT OF HOMOSASSA AND S. BOULEVARD DRIVE AS SHOWN ON SAID CITRUS COUNTY PRESCRIPTIVE ROAD PLAT AND SAID POINT ALSO BEING ON THE NORTHEASTERLY LINE OF VACATED OAK LANE AS RECORDED IN OFFICIAL RECORD BOOK 211, PAGE 585, PUBLIC RECORDS OF CITRUS COUNTY, FLORIDA, THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINES AND ALONG SAID NORTHEASTERLY LINE OF VACATED OAK LANE A DISTANCE OF 41.52

FEET TO THE POINT ON SAID CURVE, SAID POINT BEING THE POINT OF BEGINNING (CHORD BEARING AND DISTANCE BETWEEN SAID POINTS BEING N. 16 DEGREES 01' 23" W. 41.52 FEET), THENCE CONTINUE NORTHWESTERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID SOUTHWESTERLY LINES OF BOULEVARD AND S. BOUEIVARD DRIVE AND SAID CURVE, SAID POINT BEING THE SOUTHEASTERLY CORNER OF LOT 1 OF SAID BLOCK 7 (CHORD BEARING AND DISTANCE BETWEEN SAID POINTS BEING N. 14 DEGREES 53' 16" W. 12.93 FEET), THENCE CONTINUE NORTHWESTERLY ALONG THE ARC OF SAID SURVE AND ALONG SAID SOUTHWESTERLY LINES OF BOULEVARD AND S. BOULEVARD DRIVE AND ALONG THE EASTERLY LINE OF SAID LOT 1 A DISTANCE OF 35.81 FEET TO A POINT ON SAID CURVE (CHORD BEARING AND DISTANCE BETWEEN SAID POINTS BEING N. 13 DEGREES 52' 19" W. 35.81 FEET), THENCE S. 57 DEGREES 26' 56" E. 30.61 FEET, THENCE S. 14 DEGREES 08' 29" E. 6.66 FEET, THENCE S. 32 DEGREES 33' 04" W. 28.86 FEET TO THE POINT OF BEGINNING.